

SECOND REGULAR SESSION

HOUSE BILL NO. 1968

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOSEN.

5975H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 354.465, 375.1250, 375.1252, 375.1255, 375.1257, 375.1260, 375.1262, 375.1265, 375.1267, 375.1269, 375.1270, 375.1272, and 375.1275, RSMo, and to enact in lieu thereof thirteen new sections relating to health organizations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 354.465, 375.1250, 375.1252, 375.1255, 375.1257, 375.1260, 375.1262, 375.1265, 375.1267, 375.1269, 375.1270, 375.1272, and 375.1275, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 354.465, 375.1250, 375.1252, 375.1255, 375.1257, 375.1260, 375.1262, 375.1265, 375.1267, 375.1269, 375.1270, 375.1272, and 375.1275, to read as follows:

354.465. 1. The director, or any duly appointed representative, may make an examination of the affairs of any health maintenance organization as often as he deems it necessary for the protection of the interests of the people of this state, but not less frequently than once every [three] **five** years.

2. All costs incurred by the state as a result of making examinations under this section shall be paid by the organization being examined and remitted [directly to the examiner or examiners conducting the examination on billings approved by the director] **as provided in section 374.160.**

375.1250. As used in sections 375.1250 to 375.1275 and in the Risk-Based Capital (RBC) Instructions, the following terms mean:

(1) "Adjusted RBC report", an RBC report which has been adjusted in accordance with subsection 5 of section 375.1252;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 (2) "Corrective order", an order issued by the director specifying corrective actions
6 which the director has determined are required;

7 (3) "Director", the director of the department of insurance, financial institutions and
8 professional registration;

9 (4) **"Domestic health organization", a health organization domiciled in this state;**

10 (5) "Domestic insurer", any insurance company domiciled in this state;

11 (6) **"Foreign health organization", a health organization that is licensed to do
12 business in this state under chapter 354 but is not domiciled in this state;**

13 [(5)] (7) "Foreign insurer", any insurance company which is licensed to do business in
14 this state under section 375.791, but is not domiciled in this state;

15 (8) **"Health organization", a health services corporation, health maintenance
16 organization, limited health service organization, dental or vision plan, hospital, medical,
17 and dental indemnity, or service corporation or other managed care organization licensed
18 under chapter 354, but not an organization that is defined as a life and health insurer or
19 property and casualty insurer by this section and otherwise subject to either the life or
20 property and casualty RBC requirements;**

21 [(6)] (9) "Life and health insurer", any insurance company licensed under chapter 376
22 or a licensed property and casualty insurer writing only accident and health insurance;

23 [(7)] (10) "NAIC", the National Association of Insurance Commissioners;

24 [(8)] (11) "Negative trend", with respect to life and health insurers, a negative trend over
25 a period of time, as determined in accordance with the trend test calculations included in the
26 RBC instructions;

27 [(9)] (12) "Property and casualty insurer", any insurance company licensed under chapter
28 379, but such term shall not include monoline mortgage guaranty insurers, financial guaranty
29 insurers and title insurers;

30 [(10)] (13) "RBC instructions", the RBC report, including risk-based capital instructions
31 adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time
32 in accordance with the procedures adopted by the NAIC;

33 [(11)] (14) "RBC level", an insurer's **or health organization's** company action level
34 RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level
35 RBC where:

36 (a) "Company action level RBC" means, with respect to any insurer **or health
37 organization**, the product of 2.0 and its authorized control level RBC;

38 (b) "Regulatory action level RBC" means the product of 1.5 and its authorized control
39 level RBC;

40 (c) "Authorized control level RBC" means the number determined under the risk-based
41 capital formula in accordance with the RBC instruction; and

42 (d) "Mandatory control level RBC" means the product of .70 and the authorized control
43 level RBC;

44 [(12)] **(15)** "RBC plan", a comprehensive financial plan containing the elements
45 specified in subsection 2 of section 375.1255. If the director rejects the RBC plan and it is
46 revised by the insurer **or health organization**, with or without the director's recommendation,
47 the plan shall be called the "Revised RBC Plan";

48 [(13)] **(16)** "RBC report", the report required in section 375.1252;

49 [(14)] **(17)** "Total adjusted capital", the sum of:

50 (a) An insurer's **or health organization's** statutory capital and surplus as determined in
51 accordance with the statutory accounting applicable to the annual financial reports required to
52 be filed under **chapter 354 for health organizations**, section 376.350 for domestic life and
53 health insurers, section 379.105 for domestic property and casualty insurers and section 375.891
54 for foreign insurers; and

55 (b) Such other items, if any, as the RBC instructions may provide.

375.1252. 1. Every domestic insurer **and every domestic health organization** shall,
2 on or prior to each March first, prepare and submit to the director a report of its RBC level as of
3 the end of the calendar year just ended, in a form and containing such information as is required
4 by the RBC instructions. In addition, every domestic insurer **and every domestic health**
5 **organization** shall file its RBC report:

6 (1) With the NAIC in accordance with the RBC instructions; and

7 (2) With the chief insurance regulatory official in any state in which the insurer **or**
8 **health organization** is authorized to do business, if such official has notified the insurer **or**
9 **health organization** of its request in writing, in which case the insurer **or health organization**
10 shall file its RBC report not later than the later of:

11 (a) Fifteen days from the receipt of notice to file its RBC report with that state; or

12 (b) The filing date.

13 2. A life and health insurer's RBC shall be determined in accordance with the formula
14 set forth in the RBC instructions. The formula shall take into account and may adjust for the
15 covariance between:

16 (1) The risk with respect to the insurer's assets;

17 (2) The risk of adverse insurance experience with respect to the insurer's insurance
18 liabilities and obligations;

19 (3) The interest rate risk with respect to the insurer's business; and

20 (4) All other business risks and such other relevant risks as are set forth in the RBC
21 instructions. Such risks shall be determined in each case by applying the factors in the manner
22 set forth in the RBC instructions.

23 3. A property and casualty insurer's RBC shall be determined in accordance with the
24 formula set forth in the RBC instructions. The formula shall take into account and may adjust
25 for the covariance between:

26 (1) Asset risk;

27 (2) Credit risk;

28 (3) Underwriting risk; and

29 (4) All other business risks and such other relevant risks as are set forth in the RBC
30 instructions. Such risks shall be determined in each case by applying the factors in the manner
31 set forth in the RBC instructions.

32 4. **A health organization's RBC shall be determined in accordance with the formula**
33 **set forth in the RBC instructions. The formula shall take into account and may adjust for**
34 **the covariance between:**

35 (1) Asset risk;

36 (2) Credit risk;

37 (3) Underwriting risk; and

38 (4) **All other business risks and such other relevant risks as are set forth in the RBC**
39 **instructions. Such risks shall be determined in each case by applying the factors in the**
40 **manner set forth in the RBC instructions.**

41 5. **Insurers and health organizations** should seek to maintain capital above the RBC
42 levels required by sections 375.1250 to 375.1275, as such additional capital helps to secure an
43 insurer **or health organization** against various risks inherent in, or affecting, the business of
44 insurance and not accounted for or partially measured by the risk-based capital requirements
45 contained in sections 375.1250 to 375.1275.

46 [5.] 6. If a domestic insurer **or health organization** files an RBC report which in the
47 judgment of the director is inaccurate, then the director shall adjust the RBC report to correct the
48 inaccuracy and shall notify the insurer **or health organization** of the adjustment. The notice
49 shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is
50 referred to as an "adjusted RBC report".

375.1255. 1. "Company action level event" means with respect to any insurer **or health**
2 **organization**, any of the following events:

3 (1) The filing of an RBC report by the insurer **or health organization** which indicates
4 that:

5 (a) The insurer's **or health organization's** total adjusted capital is greater than or equal
6 to its regulatory action level RBC but less than its company action level RBC; or

7 (b) If a life and health insurer, the insurer has total adjusted capital which is greater than
8 or equal to its company action level RBC but less than the product of its authorized control level
9 [capital] **RBC and [2.5] 3.0**, and has a negative trend;

10 (c) If a property and casualty insurer, the insurer has total adjusted capital which is
11 greater than or equal to its company action level RBC but less than the product of its authorized
12 control level RBC and 3.0 and triggers the trend test determined in accordance with the trend test
13 calculation included in the property and casualty RBC report instructions;

14 **(d) If a health organization has a total adjusted capital which is greater than or**
15 **equal to its company action level RBC but less than the product of its authorized control**
16 **level RBC and 3.0 and triggers the trend test determined in accordance with the trend test**
17 **calculation included in the health RBC instructions;**

18 (2) The notification by the director to the insurer **or health organization** of an adjusted
19 RBC report that indicates the event in paragraph (a), (b), [or] (c), **or (d)** of subdivision (1) of this
20 subsection, if the insurer **or health organization** does not challenge the adjusted RBC report
21 pursuant to section 375.1265;

22 (3) If pursuant to section 375.1265 the insurer **or health organization** challenges an
23 adjusted RBC report that indicates the event described in subdivision (1) of this subsection, the
24 notification by the director to the insurer **or health organization** that the director has, after a
25 hearing, rejected the insurer's **or health organization's** challenge.

26 2. In the event of a company action level event the insurer **or health organization** shall
27 prepare and submit to the director an RBC plan which shall:

28 (1) Identify the conditions in the insurer **or health organization** which contribute to the
29 company action level event;

30 (2) Contain proposals of corrective actions which the insurer **or health organization**
31 intends to take and would be expected to result in the elimination of the company action level
32 event;

33 (3) **(a)** Provide projections of the insurer's financial results in the current year and at least
34 the four succeeding years, both in the absence of proposed corrective actions and giving effect
35 to the proposed corrective actions, including projections of statutory operating income, net
36 income, capital or surplus. The projections for both new and renewal business might include
37 separate projections for each major line of business and separately identify each significant
38 income, expense and benefit component;

39 **(b) Provide projections of the health organization's financial results in the current**
40 **year and at least the two succeeding years, both in the absence of proposed corrective**

41 **actions and giving effect to the proposed corrective actions, including projections of**
42 **statutory balance sheets, operating income, net income, capital and surplus, and RBC**
43 **levels. The projections for both new and renewal business might include separate**
44 **projections for each major line of business and separately identify each significant income,**
45 **expense, and benefit component;**

46 (4) Identify the key assumptions impacting the insurer's **or health organization's**
47 projections and the sensitivity of the projections to the assumptions; and

48 (5) Identify the quality of, and problems associated with, the insurer's **or health**
49 **organization's** business, including but not limited to its assets, anticipated business growth and
50 associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance
51 in each case, if any.

52 3. The RBC plan shall be submitted:

53 (1) Within forty-five days of the company action level event; or

54 (2) If the insurer **or health organization** challenges an adjusted RBC report pursuant
55 to section 375.1265 within forty-five days after notification to the insurer **or health organization**
56 that the director has, after a hearing, rejected the insurer's **or health organization's** challenge.

57 4. Within sixty days after the submission by an insurer **or health organization** of an
58 RBC plan to the director, the director shall notify the insurer **or health organization** whether
59 the RBC plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the
60 director determines the RBC plan is unsatisfactory, the notification to the insurer **or health**
61 **organization** shall set forth the reasons for the determination, and may set forth proposed
62 revisions which will render the RBC plan satisfactory, in the judgment of the director. Upon
63 notification from the director, the insurer **or health organization** shall prepare a revised RBC
64 plan, which may incorporate by reference any revisions proposed by the director, and shall
65 submit the revised RBC plan to the director:

66 (1) Within forty-five days after the notification from the director; or

67 (2) If the insurer **or health organization** challenges the notification from the director
68 pursuant to section 375.1265, within forty-five days after a notification to the insurer **or health**
69 **organization** that the director has, after a hearing, rejected the insurer's **or health organization's**
70 challenge.

71 5. In the event of a notification by the director to an insurer **or health organization** that
72 the insurer's **or health organization's** RBC plan or revised RBC plan is unsatisfactory, the
73 director may at the director's discretion, subject to the insurer's **or health organization's** right
74 to a hearing under section 375.1265, specify in the notification that the notification constitutes
75 a regulatory action level event.

76 6. Every domestic insurer **or health organization** that files an RBC plan or revised RBC
77 plan with the director shall file a copy of the RBC plan or revised RBC plan with the chief
78 insurance regulatory official in any state in which the insurer **or health organization** is
79 authorized to do business if:

80 (1) Such state has an RBC provision, substantially similar to subsection 1 of section
81 375.1267; and

82 (2) The chief insurance regulatory official of that state has notified the insurer **or health**
83 **organization** of its request for the filing in writing, in which case the insurer **or health**
84 **organization** shall file a copy of the RBC plan or revised RBC plan in that state no later than
85 the later of:

86 (a) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC
87 plan with the state; or

88 (b) The date on which the RBC plan or revised RBC plan is filed under subsection 3 or
89 4 of this section.

 375.1257. 1. "Regulatory action level event" means, with respect to any insurer **or**
2 **health organization**, any of the following events:

3 (1) The filing of an RBC report by the insurer **or health organization** which indicates
4 that the insurer's **or health organization's** total adjusted capital is greater than or equal to its
5 authorized control level RBC but less than its regulatory action level RBC;

6 (2) The notification by the director to an insurer **or health organization** of an adjusted
7 RBC report that indicates the event in subdivision (1) of this subsection, if the insurer **or health**
8 **organization** does not challenge the adjusted RBC report under section 375.1265;

9 (3) If, pursuant to section 375.1265, the insurer **or health organization** challenges an
10 adjusted RBC report that indicates the event in subdivision (1) of this subsection, the notification
11 by the director to the insurer **or health organization** that the director has, after a hearing,
12 rejected the insurer's **or health organization's** challenge;

13 (4) The failure of the insurer **or health organization** to file an RBC report by the filing
14 date, unless the insurer **or health organization** has provided an explanation for such failure
15 which is satisfactory to the director and has cured the failure within ten days after the filing date;

16 (5) The failure of the insurer **or health organization** to submit an RBC plan to the
17 director within the time period set forth in subsection 3 of section 375.1255;

18 (6) Notification by the director to the insurer **or health organization** that:

19 (a) The RBC plan or revised RBC plan submitted by the insurer **or health organization**
20 is, in the judgment of the director, unsatisfactory; and

21 (b) Such notification constitutes a regulatory action level event with respect to the insurer
22 **or health organization**, where the insurer **or health organization** has not challenged the
23 determination under section 375.1265;

24 (7) If, pursuant to section 375.1265, the insurer **or health organization** challenges a
25 determination by the director under subdivision (6) of this subsection, the notification by the
26 director to the insurer **or health organization** that the director has, after a hearing, rejected such
27 challenge;

28 (8) Notification by the director to the insurer **or health organization** that the insurer **or**
29 **health organization** has failed to adhere to its RBC plan or revised RBC plan, but only if such
30 failure has a substantial adverse effect on the ability of the insurer **or health organization** to
31 eliminate the company action level event in accordance with its RBC plan or revised RBC plan
32 and the director has so stated in the notification provided the insurer **or health organization** has
33 not challenged the determination under section 375.1265; or

34 (9) If, pursuant to section 375.1265, the insurer **or health organization** challenges a
35 determination by the director under subdivision (8) of this subsection the notification by the
36 director to the insurer **or health organization** that the director has, after a hearing, rejected the
37 challenge.

38 2. In the event of a regulatory action level event the director shall:

39 (1) Require the insurer **or health organization** to prepare and submit an RBC plan or,
40 if applicable, a revised RBC plan;

41 (2) Perform such examination or analysis as the director deems necessary of the assets,
42 liabilities and operations of the insurer **or health organization**, including a review of its RBC
43 plan or revised RBC plan; and

44 (3) Subsequent to the examination or analysis, issue an order specifying such corrective
45 actions as the director shall determine are required.

46 3. In determining corrective actions, the director may take into account such factors as
47 are deemed relevant with respect to the insurer **or health organization** based upon the director's
48 examination or analysis of the assets, liabilities and operations of the insurer **or health**
49 **organization**, including, but not limited to, the results of any sensitivity tests undertaken
50 pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

51 (1) Within forty-five days after the occurrence of the regulatory action level event;

52 (2) If the insurer **or health organization** challenges an adjusted RBC report pursuant
53 to section 375.1265, within forty-five days after the notification to the insurer **or health**
54 **organization** that the director has, after a hearing, rejected the insurer's **or health organization's**
55 challenge; or

56 (3) If the insurer **or health organization** challenges a revised RBC plan under section
57 375.1265, within forty-five days after notification to the insurer **or health organization** that the
58 director has, after a hearing, rejected the challenge.

59 4. The director may retain actuaries and investment experts and other consultants as may
60 be necessary in the judgment of the director to review the insurer's **or health organization's**
61 RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations of the
62 insurer **or health organization** and formulate the corrective order with respect to the insurer **or**
63 **health organization**. The fees, costs and expenses relating to the consultants shall be borne by
64 the affected insurer **or health organization**.

375.1260. 1. "Authorized control level event" means any of the following events:

2 (1) The filing of an RBC report by the insurer **or health organization** which indicates
3 that the insurer's **or health organization's** total adjusted capital is greater than or equal to its
4 mandatory control level RBC but less than its authorized control level RBC;

5 (2) The notification by the director to the insurer **or health organization** of an adjusted
6 RBC report that indicates the event in subdivision (1) of this subsection provided the insurer **or**
7 **health organization** does not challenge the adjusted RBC report under section 375.1265;

8 (3) If, pursuant to section 375.1265, the insurer **or health organization** challenges an
9 adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification
10 by the director to the insurer **or health organization** that the director has, after a hearing,
11 rejected the insurer's **or health organization's** challenge;

12 (4) The failure of the insurer **or health organization** to respond, in a manner satisfactory
13 to the director, to a corrective order provided the insurer **or health organization** has not
14 challenged the corrective order under section 375.1265; or

15 (5) If the insurer **or health organization** has challenged a corrective order under section
16 375.1265 and the director has, after a hearing, rejected the challenge or modified the corrective
17 order, the failure of the insurer **or health organization** to respond, in a manner satisfactory to
18 the director, to the corrective order subsequent to rejection or modification by the director.

19 2. In the event of an authorized control level event the director shall:

20 (1) Take such actions as are required under section 375.1257 regarding an insurer **or**
21 **health organization** with respect to which a regulatory action level event has occurred; or

22 (2) If the director deems it to be in the best interests of the policyholders and creditors
23 of the insurer **or health organization** and of the public, take such actions as are necessary to
24 cause the insurer **or health organization** to be placed under regulatory control under sections
25 375.1150 to 375.1246. In the event the director takes such actions, the authorized control level
26 event shall be deemed sufficient grounds for the director to take action pursuant to sections
27 375.1150 to 375.1246, and the director shall have the rights, powers and duties with respect to

28 the insurer **or health organization** as are set forth in sections 375.1150 to 375.1246. In the
29 event the director takes actions under this subdivision pursuant to an adjusted RBC report, the
30 insurer **or health organization** shall be entitled to such protections as are afforded to insurers
31 **or health organizations** pursuant to the provisions of sections 375.570 to 375.640, provided that
32 the adjusted RBC report shall be deemed a report of examination.

375.1262. 1. "Mandatory control level event" means, with respect to any insurer **or**
2 **health organization**, any of the following events:

3 (1) The filing of an RBC report which indicates that the insurer's **or health**
4 **organization's** total adjusted capital is less than its mandatory control level RBC;

5 (2) Notification by the director to the insurer **or health organization** of an adjusted RBC
6 report that indicates the event in subdivision (1) of this subsection if the insurer **or health**
7 **organization** does not challenge the adjusted RBC report under section 375.1265; or

8 (3) If, pursuant to section 375.1265, the insurer **or health organization** challenges an
9 adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification
10 by the director to the insurer **or health organization** that the director has, after a hearing,
11 rejected the insurer's **or health organization's** challenge.

12 2. In the event of a mandatory control level event the director shall take such actions as
13 are necessary to place the insurer **or health organization** under regulatory control under sections
14 375.1150 to 375.1246, or, in the case of a property and casualty insurer which is writing no
15 business, may allow the insurer to continue its existing policies until expiration of the policy
16 term and settlement of all outstanding claims under the supervision of the director. In either
17 event, the mandatory control level event shall be deemed sufficient grounds for the director to
18 take action pursuant to sections 375.1150 to 375.1246, and the director shall have the rights,
19 powers and duties with respect to the insurer **or health organization** as are set forth in sections
20 375.1150 to 375.1246. In the event the director takes actions pursuant to an adjusted RBC
21 report, the insurer **or health organization** shall be entitled to such protections as are afforded
22 to insurers **or health organizations** pursuant to the provisions of sections 375.570 to 375.640,
23 if the adjusted RBC report shall be deemed a report of examination. Notwithstanding any other
24 provision of this subsection to the contrary, the director may forego action for up to ninety days
25 after the mandatory control level event if the director finds there is a reasonable expectation that
26 the mandatory control level event be eliminated within the ninety-day period.

375.1265. 1. Upon:

2 (1) Notification to an insurer **or health organization** by the director of an adjusted RBC
3 report; or

4 (2) Notification to an insurer **or health organization** by the director that:

5 (a) The insurer's **or health organization's** RBC plan or revised RBC plan is
6 unsatisfactory; and

7 (b) Such notification constitutes a regulatory action level event with respect to such
8 insurer **or health organization**; or

9 (3) Notification to any insurer **or health organization** by the director that the insurer **or**
10 **health organization** has failed to adhere to its RBC plan or revised RBC plan and that such
11 failure has a substantial adverse effect on the ability of the insurer **or health organization** to
12 eliminate the company action level event with respect to the insurer **or health organization** in
13 accordance with its RBC plan or revised RBC plan; or

14 (4) Notification to an insurer **or health organization** by the director of a corrective order
15 with respect to the insurer **or health organization**; the insurer **or health organization** shall have
16 the right to a confidential departmental hearing, with a record made, at which the insurer **or**
17 **health organization** may challenge any determination or action by the director. The insurer **or**
18 **health organization** shall notify the director of its request for a hearing within five days after
19 the notification by the director pursuant to this subsection. Upon receipt of the insurer's **or**
20 **health organization's** request for a hearing, the director shall set a date for the hearing, which
21 date shall be no less than ten nor more than thirty days after the date of the insurer's **or health**
22 **organization's** request.

23 2. An insurer **or health organization** aggrieved by an order of the director after a
24 hearing pursuant to subsection 1 of this section may obtain judicial review of such order pursuant
25 to sections 536.100 to 536.140, except that:

26 (1) No insurer **or health organization** shall be deemed aggrieved unless the director has
27 either:

28 (a) Made the director's order public; or

29 (b) Taken action pursuant to sections 375.1250 to 375.1275 or pursuant to sections
30 375.1165 to 375.1246; or

31 (c) Issued a corrective order after the hearing;

32 (2) If the director has taken action as described in paragraph (b) of subdivision (1) of
33 subsection 1 of this section, judicial review pursuant to this section shall be consolidated with
34 and be pendent to the action pursuant to the director's action.

35 3. There shall be no judicial review of any action by the director pursuant to sections
36 375.1250 to 375.1275 except as provided in subsection 2 of this section.

375.1267. 1. All RBC reports, to the extent the information therein is not required to
2 be set forth in a publicly available annual statement schedule, and RBC plans, including the
3 results or report of any examination or analysis of an insurer **or health organization** performed
4 pursuant to this section and any corrective order issued by the director pursuant to examination

5 or analysis, with respect to any **domestic** insurer [or] , foreign insurer, **health organization, or**
6 **foreign health organization** which are filed with the director constitute information that might
7 be damaging to the **domestic** insurer [or] , foreign insurer, **health organization, or foreign**
8 **health organization** if made available to its competitors, and therefore shall be kept confidential
9 by the director. This information shall neither be made public nor be subject to subpoena, other
10 than by the director and then only for the purpose of enforcement actions taken by the director
11 pursuant to sections 375.1250 to 375.1275 or any other provision of the insurance laws of this
12 state.

13 2. The comparison of an insurer's **or health organization's** total adjusted capital to any
14 of its RBC levels is a regulatory tool which may indicate the need for possible corrective action
15 with respect to the insurer **or health organization**, and is not intended as a means to rank
16 insurers **or health organizations** generally. Therefore, except as otherwise required pursuant
17 to the provisions of sections 375.1250 to 375.1275, the making, publishing, disseminating,
18 circulating or placing before the public, or causing directly or indirectly, the making, publishing,
19 disseminating, circulating or placing before the public, in a newspaper, magazine or other
20 publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or
21 television station, or in any other way, an advertisement, announcement or statement containing
22 an assertion, representation or statement with regard to the RBC levels of any insurer **or health**
23 **organization**, or of any component derived in the calculations by any insurer **or health**
24 **organization**, agent, broker or other person engaged in any manner in the business of insurance
25 would be misleading and is therefore an unfair trade practice as defined in section 375.934;
26 except that if any materially false statement with respect to the comparison regarding an insurer's
27 **or health organization's** total adjusted capital to its RBC levels or an inappropriate comparison
28 of any other amount to the insurer's **or health organization's** RBC levels is published in any
29 written publication and the insurer **or health organization** is able to demonstrate with
30 substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then
31 the insurer **or health organization** may publish an announcement in a written publication if the
32 sole purpose of the announcement is to rebut the materially false statement.

33 3. The RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised
34 RBC plans are intended solely for use by the director in monitoring the solvency of insurers **and**
35 **health organizations** and the need for possible corrective action with respect to insurers **or**
36 **health organizations** and shall not be used by the director for ratemaking nor considered or
37 introduced as evidence in any rate proceeding nor used by the director to calculate or derive any
38 elements of an appropriate premium level or rate of return for any line of insurance which an
39 insurer, **health organization**, or any affiliate is authorized to write.

40 4. In order to assist in the performance of the director's duties, the director:

41 **(1) May share documents, materials, or other information, including the**
42 **confidential and privileged documents, materials, or information subject to subsection 1**
43 **of this section, with other state, federal, and international regulatory agencies, with the**
44 **national association of insurance commissioners and its affiliates and subsidiaries, and with**
45 **state, federal, and international law enforcement authorities, provided that the recipient**
46 **agrees to maintain the confidentiality and privileged status of the document, material, or**
47 **other information;**

48 **(2) May receive documents, materials, or other information, including otherwise**
49 **confidential and privileged documents, materials, or information from the national**
50 **association of insurance commissioners and its affiliates and subsidiaries and from**
51 **regulatory and law enforcement officials of other foreign or domestic jurisdictions, and**
52 **shall maintain as confidential or privileged any document, material, or information**
53 **received with notice or the understanding that it is confidential or privileged under the**
54 **laws of the jurisdiction that is the source of the document, material, or information; and**

55 **(3) May enter into agreements governing sharing and use of information consistent**
56 **with this subsection.**

57 **5. No waiver of any applicable privilege or claim of confidentiality in the documents,**
58 **materials, or information shall occur as a result of disclosure to the director under this**
59 **section or as a result of sharing as authorized in subdivision (3) of subsection 4 of this**
60 **section.**

 375.1269. 1. The provisions of sections 375.1250 to 375.1275 are supplemental to any
2 other provisions of the laws of this state, and shall not preclude or limit any other powers or
3 duties of the director under such laws, including but not limited to sections 375.1150 to
4 375.1246.

5 2. The director may adopt reasonable rules and regulations necessary for the
6 implementation of sections 375.1250 to 375.1275. No rule or regulation promulgated under
7 authority of this section shall become effective unless it has been promulgated pursuant to the
8 provisions of section 536.024.

9 3. The director may exempt from the provisions of sections 375.1250 to 375.1275 any
10 domestic property and casualty insurer which:

11 (1) Writes direct business only in this state;

12 (2) Writes direct annual premiums of two million dollars or less; and

13 (3) Assumes no reinsurance in excess of five percent of direct premium written.

14 **4. The director may exempt from the provisions of sections 375.1250 to 375.1275**
15 **any domestic health organization that:**

16 **(1) Writes direct business only in this state;**

- 17 **(2) Writes direct annual premiums of two million dollars or less; and**
18 **(3) Assumes no reinsurance in excess of five percent of direct premium written; or**
19 **(4) Is a limited health service organization that covers less than 2,000 lives.**

20 **5.** There shall be no liability on the part of, and no cause of action shall arise against, the
21 director, the department of insurance, financial institutions and professional registration or its
22 employees or agents for any action taken by them in the performance of their powers and duties
23 under sections 375.1250 to 375.1275.

375.1270. 1. Any foreign insurer **or health organization** shall, upon the written request
2 of the director, submit to the director an RBC report as of the end of the calendar year just ended
3 the later of:

4 (1) The date an RBC report would be required to be filed by [an] **a domestic insurer or**
5 **domestic health organization** under sections 375.1250 to 375.1275; or

6 (2) Fifteen days after the request is received by the foreign insurer **or foreign health**
7 **organization.**

8 2. Any foreign insurer **or foreign health organization** shall, at the written request of
9 the director, promptly submit to the director a copy of any RBC plan that is filed with the chief
10 insurance regulatory official of any other state.

11 3. In the event of a company action level event regulatory action level event or
12 authorized control level event with respect to any foreign insurer **or foreign health organization**
13 as determined under the RBC statute applicable in the state of domicile of the insurer or, if no
14 RBC provision is in force in that state, under the provisions of sections 375.1250 to 375.1275,
15 if the chief insurance regulatory official of the state of domicile of the foreign insurer **or foreign**
16 **health organization** fails to require the foreign insurer **or foreign health organization** to file
17 an RBC plan in the manner specified under the RBC statute or, if no RBC provision is in force
18 in the state, under section 375.1255, the director may require the foreign insurer **or foreign**
19 **health organization** to file an RBC plan with the director. In such event, the failure of the
20 foreign insurer **or foreign health organization** to file an RBC plan with the director shall be
21 grounds to order the insurer **or foreign health organization** to cease and desist from writing
22 new insurance business in this state, pursuant to the procedures set forth in section 374.046.

23 4. In the event of a mandatory control level event with respect to any foreign insurer **or**
24 **foreign health organization**, if no domiciliary receiver has been appointed with respect to the
25 foreign insurer **or foreign health organization** under the rehabilitation and liquidation statute
26 applicable in the state of domicile of the foreign insurer **or foreign health organization**, the
27 director may make application to the circuit court of Cole County permitted pursuant to section
28 375.1234 with respect to the liquidation of property of foreign insurers **or foreign health**

29 **organizations** found in this state, and the occurrence of the mandatory control level event shall
30 be considered adequate grounds for the application.

375.1272. All notices by the director to an insurer **or health organization** which may
2 result in regulatory action under sections 375.1250 to 375.1275 shall be effective upon dispatch
3 if transmitted by registered or certified mail, or in the case of any other transmission shall be
4 effective upon the insurer's **or health organization's** receipt of such notice.

375.1275. 1. For RBC reports required to be filed by life and health insurers with respect
2 to 1993, the following requirements shall apply in lieu of the provisions of section 375.1255:

3 (1) In the event of a company action level event with respect to an insurer, the director
4 shall take no regulatory action;

5 (2) In the event of a regulatory action level event pursuant to section 375.1257, the
6 director shall take the actions required pursuant to section 375.1255;

7 (3) In the event of a regulatory action level event pursuant to section 375.1257 or an
8 authorized control level event, the director shall take the actions required pursuant to section
9 375.1257 with respect to the insurer;

10 (4) In the event of a mandatory control level event with respect to an insurer, the director
11 shall take the actions required pursuant to section 375.1260 with respect to the insurer.

12 2. For RBC reports required to be filed by property and casualty insurers with respect
13 to 1996, the following requirements shall apply in lieu of the provisions of sections 375.1255 to
14 375.1262:

15 (1) In the event of a company action level event with respect to a domestic insurer, the
16 director shall take no regulatory action under sections 375.1250 to 375.1275;

17 (2) In the event of a regulatory action level event under subdivision (1), (2) or (3) of
18 subsection 1 of section 375.1257, the director shall take the actions required under section
19 375.1255;

20 (3) In the event of a regulatory action level event under subdivision (4), (5), (6), (7), (8)
21 or (9) of subsection 1 of section 375.1257 or an authorized control level event, the director shall
22 take the actions required under section 375.1257, with respect to the insurer;

23 (4) In the event of a mandatory control level event, the director shall take the actions
24 required under section 375.1260 with respect to the insurer.

25 3. **For RBC reports required to be filed by health organizations with respect to**
26 **2014, the following requirements shall apply in lieu of the provisions of section 375.1255**
27 **to 375.1262:**

28 (1) **In the event of a company action level event with respect to a domestic health**
29 **organization, the director shall take no regulatory action;**

30 **(2) In the event of a regulatory action level event under subdivisions (1) to (3) of**
31 **subsection 1 of section 375.1257, the director shall take the actions required pursuant to**
32 **section 375.1255;**

33 **(3) In the event of a regulatory action level event under subdivisions (4) to (9) of**
34 **subsection 1 of section 375.1257 or an authorized control level event, the director shall take**
35 **the actions required under section 375.1257 with respect to the health organization;**

36 **(4) In the event of a mandatory control level event with respect to a health**
37 **organization, the director shall take the actions required under section 375.1260 with**
38 **respect to the health organization.**

39 **4.** The actions required under sections 375.1255 to 375.1262 or this section shall not
40 apply to any insurer operating under the provisions of sections 287.900 to 287.920 which is
41 under any order of supervision, including waivers of requirements for capital and surplus, issued
42 or commenced by the director prior to August 28, 1996. This provision shall remain in effect
43 until such order or proceeding expires or is otherwise terminated by further order of the director.

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